Editor's note: Appealed – aff'd, Civ. No. 75-282 (D.N.M. May 5, 1977)

NOLA GRACE PTASYNSKI
(Supp.) (On Court Remand)

IBLA 74-174 Decided December 20, 1976

Proceeding on remand from the United States District Court for the District of New Mexico for readjudication of IBLA 74-174 in light of Skelly Oil Co. v. Morton, Civil No. 74-411 (D.N.M., July 16, 1975).

Bureau of Land Management decision rejecting in part lease offer NM 19617 affirmed, prior Board decision, as it relates to Nola Grace Ptasynski and is consistent herewith, affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geological Structure--Secretary of the Interior

   Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

APPEARANCES: S. B. Christy IV, Esq., Jennings, Christy & Copple, Rosewell, New Mexico, for appellant; Gayle E. Manges, Esq., Field Solicitor, Department of the Interior, Santa Fe, New Mexico, for respondent Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Nola Grace Ptasynski's offer NM 19617 was drawn number one for Parcel 71 in the October 1973, New Mexico State Office, Bureau

of Land Management (BLM), drawing of simultaneously-filed oil and gas lease offers. Parcel 71 encompassed 1,518.81 acres in Eddy County, New Mexico. The State Office signed and issued a lease November 19, 1973, with an effective date of December 1, 1973. However, the lease was issued for only 398.81 acres. By decision dated November 26, 1973, lease offer NM 19617 was rejected as to the remaining lands in Parcel 71 because such lands were placed in an undefined addition to the James Ranch Field known geologic structure (KGS), effective September 9, 1973.

Appellant appealed such decision to this Board and by decision styled Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), the Board affirmed the partial rejection of lease offer NM 19617. Appellant Ptasynski contended that the Geological Survey's determination of the KGS was erroneous and that it was error for the determination to be retroactively back-dated to September 9, 1973. The Board held that appellants made no clear and definite showing of error in Geological Survey's KGS determination and that the KGS determination was properly dated September 9, 1973, the date on which the existence of the KGS was ascertained, citing 43 CFR 3100.7-3.

Ptasynski filed a suit for judicial review, Ptasynski v. Hathaway, et al., Civil No. 75-282 (D.N.M., filed May 23, 1975). Therein, plaintiff Ptasynski requested that she be granted a factual hearing in order to determine whether those lands described in BLM's partial rejection of lease offer NM 19617 were within a KGS at the appropriate date for such determination.

By Order dated April 6, 1976, the District Court remanded the case to the Department

> * * * for a determination of the fact situation in this case as examined in the light of the Memorandum Opinion issued in Skelly Oil Co. v. Rogers C. B. Morton, et al., USDC, DNM (July 16, 1975) and to consider in connection with the fact question the question of acceptance of the lease by BLM by the execution of an undelivered lease by an officer whose authority is now challenged by the United States. 1/

1/ Barbara C. Lisco also filed a suit for judicial review, Lisco v. Hathaway, et al., Civil No. 75-281 (D.N.M., filed May 23, 1975). The District Court by Order dated March 3, 1976, remanded the cause to the Department for determination of the fact situation in the case in light of the Memorandum opinion issued in Skelly Oil Co. v. Morton. On September 7, 1976, the Board in Barbara C. Lisco, 26 IBLA 340 (1976), vacated 19 IBLA 125 (1975), as it related to Barbara Lisco and set aside the partial cancellation of NM 19618.

The holding in Skelly Oil Co. v. Morton, Civil No. 74-411 (D.N.M., July 16, 1975), rev'g, 16 IBLA 264 (1974), was discussed by the Board in Barbara C. Lisco, 26 IBLA 340, 342 (1976) wherein it was stated:

> In Skelly Oil Co. v. Morton, supra, the District Court set aside the Department's cancellation of a noncompetitive lease issued for land which the State Office was later notified was in the same undefined addition to the James Ranch Field KGS involved here. The Court held that the date on which the Survey determines the existence of the structure, rather than the date on which the physical facts were learned that results in the KGS determination, is the "date of the ascertainment" of the KGS within the meaning of regulation 43 CFR 3100.7-3, which governs the authority of the Department to issue a noncompetitive oil and gas lease under sec. 17 of the Act, 30 U.S.C. § 226 (1970). The Court then found that the KGS affecting Skelly Oil Co. (and appellant herein) was "ascertained" within the meaning of the regulation not on September 9, 1973, but on November 9, 1973.

The ascertainment date of November 9, 1973, is also applicable to appellant Ptasynski.

Pursuant to the Board's order of August 25, 1976, issued under 43 CFR 4.29, the parties were permitted to submit recommendations to the Board on further proceedings in the case.

Further facts concerning the Ptasynski lease offer were uncovered during the District Court proceedings. Raul Martinez, Chief, Minerals Section, BLM, Santa Fe, New Mexico, stated in a deposition taken in connection with Lisco v. Hathaway, supra, that he had originally signed a lease form for NM 19617 for 1,581.81 acres on November 5, 1973; that he forwarded the lease form to Geological Survey and they returned it with the notation, "These lands [referring to 1120] are in KGS effective 9-9-73. Memo dated 11-9-73." (Deposition Transcript (D.T.) 15-16).

The lease form dated November 5, 1973, was never delivered to Ptasynski. Mr. Martinez retained the original in his working file and destroyed the copies (D.T. 35). Another lease form, covering only 398.81 acres, was prepared and signed by Mr. Martinez on November 19, 1973. The November 19 lease was stamped, as was the November 5 lease form, with the following proviso:

> The lease is subject to the determination by the Geological Survey as to whether the lands

herein described were on a known geologic structure of a producing oil or gas field as of the date of signing hereof by the authorized officer.

The November 19 lease was forwarded to Geological Survey and returned with the stamped indication that the 398.81 acres in the lease were not within a KGS "on date of lease issuance." The indication was signed by the Acting Area Geologist.

In light of the above facts, respondent (BLM) argues that the signing of the "lease" by the signing officer on November 5, 1973, prior to a determination of the KGS status of the lands by the Geological Survey was an unauthorized act and that the Government is not bound by the unauthorized acts of its employees. Respondent states that Secretarial Order No. 2948 dated October 6, 1972, only authorizes the signing officer to issue a mineral lease on some date subsequent to the referral of the application for lease to the Geological Survey for a KGS report. Respondent indicates that the procedure of signing the lease prior to the KGS determination is no longer followed.

Respondent also presses the unique argument that the officer of Geological Survey responsible for the KGS determination is actually the authorized officer referred to in the proviso stamped on the lease, quoted supra. Therefore, respondent argues that the November 5 "lease" was a nullity because it was not signed by the authorized officer, i.e., the Area Geologist, Geological Survey.

In Barbara C. Lisco, supra at 343-44, we discussed the date of issuance of a lease:

> For the following reasons we conclude that the date of issuance, i.e., the date of signing, rather than the date of delivery is the date determinative of rights in this case. Prior to 1967, the Department followed the practice of issuing noncompetitive oil and gas leases for lands within a KGS as long as the lease offer had been filed prior to ascertainment of the KGS. George C. Vournas, 56 I.D. 390 (1938). In 1967 Vournas was overruled and the Solicitor ruled that since a lease offer vests no rights in the applicant, the date determinative of rights is the date of lease issuance. Solicitor's Opinion (Issuance of Noncompetitive Oil and Gas Fields), 74 I.D. 285 (1967). In conjunction with this Opinion, Secretary Udall promulgated 43 CFR 3123.3(c) (1968), now 43 CFR 3110.1-8 (1975), which provides:
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> If, after the filing of an offer for a noncompetitive lease and before

> the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.
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> Issuance of a lease is accomplished by the signature of the appropriate officer. 43 CFR 3111.1-1(c). This same regulation provides that a copy of the executed lease will be sent to the lessee, but it does not nor does any other relevant regulation invest mailing/delivery with any legal significance.
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> A federal oil and gas lease may be an interest in real property, but that does not invoke the common law of vesting of title to real property in aid of respondent's position. As the Solicitor's Opinion, supra at 290, indicates, the terms of the Mineral Leasing Act of 1920 require the interpretation made therein, namely, that the date of issuance is the date determinative of the Secretary's authority to lease noncompetitively. Congress has plenary authority to establish the manner and conditions of the disposition of public resources, Constitution of the United States, Art. IV, sec. 3, cl. 2. Congress having so provided in the Mineral Leasing Act of 1920, we are not free to amend the statute by reimposing the common law of property conveyancing.
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> The Department has recognized that upon signature of a lease by both parties, it becomes a binding instrument and cannot be vitiated by unilateral action, all else being regular. Charles D. Edmondson, et al., 61 I.D. 355, 363 (1954). See Stephen P. Dillon, et al., 66 I.D. 148, 150 (1959); R. S. Prows, 66 I.D. 19, 21 (1959). [Emphasis in original; footnote omitted.]

As set forth in 43 CFR 3111.1-1(c), the United States indicates its acceptance of the lease offer and the issuance of the lease by the signature of the appropriate officer in the space provided. As Lisco outlined, no delivery is necessary.

Respondent's argument that the Area Geologist, Geological Survey was the authorized officer must fail. By examining the lease issued by BLM on November 19, 1973, this fact is clear. Raul Martinez signed that lease on November 19, 1973. The stamped proviso indicated that the lease was subject to a KGS determination as of the date of signing by the authorized officer. There is no space provided on the lease for any signature or date by the

Area Geologist. There is only space for the signature of the signing officer, the date of signing and the effective date of the lease. In addition, the stamped statement which the Acting Area Geologist attested to by signature on the November 19 lease stated:

> LANDS IN LEASE WERE NOT WITHIN A KNOWN GEOLOGIC STRUCTURE ON DATE OF LEASE ISSUANCE. [Emphasis added.]

It is difficult to understand how the geologist could be attesting to a certain fact as of the date of issuance if the date were not that of the signing by the signing officer. No date was placed on the lease by the geologist. The date of issuance of such lease was November 19.

The lease signed November 19, however, was only for non-KGS lands. Appellant's arguments concern the lands that were omitted from that lease but were included in the November 5 lease form signed by Martinez. Because the KGS was determined November 9 and there is no question that the November 19 lease issued for non-KGS lands following information received from Survey, there is no reason to question or disturb that lease. The issue then is whether the act of Martinez in signing a lease on November 5, which was prior to the November 9 KGS ascertainment date, binds this Department to a lease for the KGS lands ascertained on November 9.

[1] Respondent has argued that Raul Martinez was without authority to sign the November 5 lease and that the United States cannot be bound by the unauthorized acts of its employees. Respondent's argument is based on Secretarial Order No. 2948, dated October 6, 1972. Respondent interprets the order as having the same effect as a statute or duly promulgated regulation.

The applicable section of the Secretarial Order entitled "Division of Responsibility Between the Bureau of Land Management and the Geological Survey for Administration of the Mineral Leasing Law - Onshore," reads, as follows:

> Sec. 3. Issuance of Mineral Leases, Permits, and Licenses
>
> (a) Applications. Prior to the issuance of * * * leases * * * the Bureau of Land Management refers all applications for such * * * leases * * * to the Geological Survey for a report as outlined in (b) below.
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> * * * * * * *

> (5) All applications for noncompetitive oil and gas * * * leases filed with the Bureau of Land Management will, prior to the issuance of a lease, be referred to the Geological Survey for a determination as to whether the lands are within a known geologic structure (KGS), * * *.

The order of the Secretary delineating the responsibilities of BLM and Geological Survey in the onshore mineral leasing programs was issued as a policy directive. As such, it was binding on the Department. Cf. Republic Steel Corporation, 5 IBMA 306, 82 I.D. 607, 608-9 (1975).

Such order was in effect on November 5, 1973, when Raul Martinez signed lease form NM 19617, and for that reason, the signing of the lease prior to referral of the offer to Geological Survey for a KGS determination violated the Secretary's directive. Mr. Martinez was without authority to issue the lease prior to the KGS determination.

It is a long-established rule that the Secretary is not bound by the unauthorized acts of his agents, herein a BLM employee. E.g., Atlantic Richfield Company v. Hickel, 432 F.2d 587 (10th Cir. 1970); Calazona Fertilizer Company, 66 I.D. 4, 10 (1959). Nor may appellant rely on estoppel to bind the Secretary for the action of his agent because the elements which must be present to establish the defense of estoppel are lacking herein. See Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (1960), cited in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970). In addition, appellant's lease offer vested appellant with no rights to a lease. See Solicitor's Opinion, 74 I.D. 285 (1967).

Based on Secretarial Order 2958, we are constrained to conclude that Mr. Martinez was without authority to sign the November 5 lease form and for that reason the lease was voidable.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM's partial rejection of lease offer NM 19617 dated November 26, 1973, is affirmed and that part of Nola Grace

Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), pertaining to Nola Grace Ptasynski, which is consistent herewith, is affirmed.

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Frederick Fishman
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Joan B. Thompson
Administrative Judge